IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 16718 of 2004(M)

OS.169/1987 of II ADDL. SUB COURT,THRISSUR

.....

PETITIONER:

LOHITHAKSHAN, S/O.KOCHUNNI, AGED 57 YEARS,
PEERUMPARAMBIL, CHOWUR VILLAGE,
THIRSSUR DISTRICT.

BY ADV. SRI.K.A.SREEJITH

RESPONDENTS:

---

1. VIJAYA KURIES & LOANS PVT.LIMITED,
THRISSUR.

2. FRANCIS, S/O. ELAVATHUNKAL JACOB,
CHOWUR VILLAGE, THRISSUR.

3. VINCENT, S/O. DO. DO., CHOWUR VILLAGE,
THIRSSUR.

4. KUMPILA, DO. DO.

5. M.V. FRANCIS, S/O. MARIYEEDEN,
VARGHESE, DO. DO.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.16718/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF CLAIM PETITION DT.26.9.01 IN EP.3/92 IN E.A.1483 IN O.S.169/87

EXT.P2 – TRUE COPY OF STAY PETITION FILED BY PETR. DT.26.9.01 IN THE ABOVE OS.

EXT.P3 – TRUE COPY OF ORDER OF SUB COURT IN E.A.274/02 DT.30.8.03.

EXT.P4 – TRUE COPY OF ORDER OF DO. ON THE DELAY PETITION, DT.8.8.03

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.16718 OF 2004

.....

DATED THIS THE 20TH JUNE, 2007

J U D G M E N T

Exts.P3 and P4 orders passed by the execution court on an application for review filed by the petitioner seeking review of an earlier order dismissing a claim petition filed by him under Order XXI Rule 98 C.P.C. and a separate application seeking condonation of delay caused in the matter are under challenge in this Writ Petition. Ext.P4 is the order on the application for condonation of delay. Ext.P4 is supportable in view of the indisputable position that the execution court did not have power to condone delay. The grievance of the petitioner is that even before the claim petition filed under Order XXI Rule 98 was adjudicated, the execution court dismissed the same on the reason that the E.P. is dismissed.

2. If the facts are as alleged by the petitioner, i.e., if the petition filed by the petitioner under Order XXI Rule 98 was dismissed only on the reason that the E.P. was dismissed and if the petitioner continues to be in possession of the property, the dismissal of the claim petition will not stand in the way of the petitioner lodging claims as and when

there is an attempt by anybody to dispossess him.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl

(PIUS C.KURIAKOSE, JUDGE)

tgl